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## CLOSED SHOP VERSUS OPEN SHOP

The increasing activity of trade unions in pressing their claims for recognition at the present time is resulting in a renewal of the discussion of the merits of the closed shop versus the open shop. The campaign against the closed shop was so successful in certain industries a dozen or more years ago that the movement itself seems to have lost momentum because of its success. Just now, with unprecedented demands for all grades and classes of labor, the workers seem to have regained a part of their lost bargaining power and to have been placed, temporarily at least, in a position to again demand recognition from those employers who for a generation have refused to meet with the representatives of organized labor. Hence the reappearance of the arguments for and against the closed shop.

For the most part this discussion is conducted by employers or their representatives, and is therefore stated in the terminology common to that group. But even when the press and the public give attention to the question, we are accustomed to accept the employers' definitions of the terms open shop and closed shop, apparently without stopping to inquire whether or not they are correct. We ignore labor's substitute terms which, although admittedly biased and unrepresentative, should at least be given consideration. If we *are* to be the impartial third party to industrial disputes, should we not learn how much truth there is in the contentions of each of the two other parties and, if necessary, adopt new terms which are representative and which are accurately descriptive? It is in the hope of contributing to this end that the writer has made the following analysis. In each case he has sought the expressions of the recognized leaders of both labor and capital in order that he may present the views of both parties fairly. Whether or not the conclusions of this article are accepted, it is high time to give attention to the facts upon which these conclusions are based in order to find some classification of terms which will be fair to both capital and labor and intelligible to the public.

First, what are the facts to be considered? Whatever definitions we give to the terms open shop and closed shop we agree that we are trying to describe the relationship of trade unionism to industry. Perhaps the reason we do not agree upon definitions is that this relationship is too complex to be fully described by two simple terms. Some of these conditions are as follows:

1. There is the shop which chooses to employ none but union members because the employer believes that the union can supply him with more efficient workmen than he can secure in any other manner.

2. Then there is the shop which employs none but union members because the employer fears to incur the enmity of the labor organization to which his workmen belong.

In both of these cases the employer sooner or later establishes or accepts a definite policy of employing only union members and incorporates this policy into an agreement with the union.

3. Other employers, while agreeing with the union upon the terms of the labor contract, refuse to concede the exclusive employment of union members. Such employers may concede a definite percentage, may show a preference for union men when other considerations are approximately equal (which may result in a shop with 100 per cent union membership), or may exercise a preference for non-union men though employing them at union terms.

4. Some employers, through necessity, deal with their workmen only as individuals. This may be either because the workmen have no union or, if they have, because it is weak and unrepresentative of employees in that class of work.

5. Still others, through choice, insist upon dealing with workmen only as individuals, yet do not refuse absolutely to hire union members. Employers in this group are not indifferent to unionism but rather pursue a watchful policy, using means to weaken its union when the membership in the shop becomes threatening and ignoring the organization entirely when its representation in the shop is too small to cause concern.

6. Then there are employers who not only refuse to deal with unions but who will not knowingly employ workmen who are union members. They will even dismiss employees immediately upon learning that they are members of a labor organization.

7. Finally, the unions themselves occasionally introduce further complications by refusing to permit their members to work in shops on strike or in shops declared unfair for any other reason.

Even such a classification does not exhaust the possibilities for confusion in the popular discussions of open shop versus closed shop. For while it is popularly assumed that all unions pursue the same policy with respect to the degree of control they exercise over the supply of men in their trades, such is not the case. Some

unions have no apprenticeship regulations and only nominal initiation fees. They admit, without prejudice, any workman who can demonstrate his ability to perform the duties required in the trade. Other unions restrict their membership by refusing to admit qualified workmen except upon payment of extortionate initiation fees which amount in their operation to an effective obstacle to union membership. This in turn may mean at times an equally effective bar to employment at that particular trade. Still other unions limit the recruits to their trades by arbitrary apprenticeship ratios which are governed, more or less, by the needs of the trade, but which operate to maintain a monopoly of labor for the particular union members involved. Finally, some unions carry the restriction of apprentices to the extreme of limiting learners in the trade to the sons of union members.

These facts indicate the complexity of the problem of union relationship to industry. Yet how different is the interpretation often given to a discussion of this problem. The very attempt to simplify a complex situation often results in the omission of important considerations. That this is true of the question of open shop versus closed shop will be made clear by the following analysis.

From the employers' point of view, the closed shop is a "monopoly in favor of the particular members of the union which is a party to the closed-shop agreement": not a "real monopoly" but one which is artificial and arbitrary because "outside its ranks there is a large supply of labor seeking employment, and it can maintain its monopoly only by preventing this potential supply from reaching its natural market and coming in contact with the correlative demand of the employer. . . . This prevention is accomplished in one way and in one way only—by the use of force and coercion in one form or another, either to keep the outsider from accepting employment or to keep the employer from accepting his services."<sup>1</sup>

Any employer who resists the demand for a closed shop "is said to have an open shop"; a shop which "is free to all, to the union man as well as the non-union man."<sup>2</sup>

Trade unionists, on the contrary, claim that "there is no

<sup>1</sup> Walter Drew, "Closed Shop Unionism," in *Bulletin* no. 16, National Association of Manufacturers, pp. 4-5.

<sup>2</sup> W. H. Pfahler, in *American Economic Association Publications*, Third Series, vol. 4, pp. 183, 186.

closed shop." "When confronted by persons who persist in speaking, in private and public, of the 'closed shop,' the trade unionists recognize by that sign that they are dealing with an enemy, employing the verbal ammunition of an enemy, distorting facts as an enemy, and without having the manliness and candor of a courageous enemy."<sup>3</sup> Open shops, according to trade unionists, "are in fact *closed shops against union men and women*."<sup>4</sup> Or again, "In reality the open shop means only the open door through which the union man goes out and the non-union man comes in to take his place."<sup>5</sup>

For the most part economic writers have adopted the employers' definitions of open and closed shop, without stopping to inquire whether or not there may be situations not covered by these two terms.<sup>6</sup> Others, looking a little farther into industrial relations, nevertheless use the one term, open shop, to describe any one of the following conditions: (1) A shop in which "union men or non-union men are hired indifferently"; (2) a shop "entirely filled with union men"; (3) a shop "open only to non-union men."<sup>7</sup> No account is taken of the shops which could properly be classified under neither open shop as here defined nor the employers' definition of closed shop.

Other writers, more careful of their terminology, accept the employer's definition of open shop but give a new name to the condition described by the trade unionists as an open shop in practice.<sup>8</sup> In a few instances attempts at a more exact classification have been made by economic writers. Professor Commons has made one such classification which meets some of the objections stated above. He says:

<sup>3</sup> Samuel Gompers, in *American Federationist*, vol. 18, p. 118.

<sup>4</sup> W. E. Bryan, in *American Federationist*, vol. 19, p. 321.

<sup>5</sup> Clarence Darrow, quoted in *Current Literature*, vol. 51, p. 654.

<sup>6</sup> For example, Professor Taussig, after discussing the closed shop says, "The alternative is the open shop in which the employers deal with their laborers individually, or at least deal with them irrespective of their being members of the union." *Principles of Economics*, vol. II, p. 269. Most writers of economic texts follow Taussig in this classification.

<sup>7</sup> C. W. Eliot, *Future of Trade Unionism and Capitalism*, pp. 62-63.

<sup>8</sup> F. T. Carlton, *History and Problems of Organized Labor*, p. 122, defines open shop as follows: "An open shop is one in which union and non-union men work, or may work, side by side. No discrimination is practiced against union or non-union men." Professor Carlton then divides other shops into anti-union shops closed to union men, closed shops with open unions, and closed shops with closed unions.

The closed shop would be one viewed from the side of the contract, and would be designated as one which would be closed against the non-unionist by a formal agreement with the union; the open shop as one, where, as far as the agreement is concerned, the employer is free to hire union or non-union men; the union shop as one where, irrespective of the agreement, the employer as a matter of fact, has only union men. Thus an open shop, according to agreement, might be in practice a union shop, a mixed shop or even a non-union shop. The closed shop would, of course, be a union shop, but the union shop might be either closed or open.<sup>9</sup>

Marcus M. Marks has made a more minute classification in which, apparently, he has attempted to include all possible conditions of industrial relationship between labor and capital. His definitions are as follows: (1) The anti-union shop where the employer is "emphatically and frankly opposed" to the organization of his workmen. He will not knowingly employ a union man and will discharge those who join unions at any time. (2) The shop which is open because there is no union for the workmen to join. (3) The "typical open shop" where the employer is indifferent, neutral, or even friendly toward the union but will not grant it an agreement. Neither does he discriminate against union members. (4) The open shop which employs both union and non-union workmen but where the union either signs an agreement with the employer or reaches a mutually satisfactory understanding with him. (5) The union shop, all of whose workmen are union men though the employer may not even know of the existence of the union. At any rate he does not grant it recognition. (6) The closed shop with the open union. The employer is free to hire whomsoever he chooses provided they join the union at once. The union of course receives recognition. (7) The closed shop with the closed union. New workmen are obtained only by application to the business agent of the union and if an employee loses standing with the union the employer agrees to discharge him upon the request of the union.<sup>10</sup>

But why call a shop "open" if the employer deliberately hires none but non-union men? Or why speak of a union shop if the workers therein give so little attention to their organization that the employer does not even know of its existence? And surely

<sup>9</sup> *Labor and Administration*, pp. 89-90.

<sup>10</sup> *Independent*, May 26, 1910. Even such a detailed classification is not exhaustive for it makes no mention, for example, of the shops closed to union men by the union itself.

there is a very great difference between the "open shop" which refuses to recognize the union and the one which, while hiring non-union men as well as union men, gives the union a voice in the determination of the conditions under which its members work.

Furthermore, we are accustomed to think of the open shop as the typically American, man-to-man method of agreement upon the terms of the labor contract. We picture the individual employer discussing with the individual workman the job in question, each trying to drive a good bargain in typical American fashion. But open shop, so-called, is often established, not by the action of an individual employer, but by the decision of an employers' association, some of whose members may even be enjoined by court action from exercising their individual wills in determining relations with their employees, without suffering severe indemnities to the association.

Frequently, the employers' association supplies individual contracts to its members with instructions not to hire any workmen who refuse to sign them. A typical contract of this nature reads as follows:

I, the undersigned, in consideration of the signing of a protection agreement . . . do hereby agree as part of the consideration thereof:

I shall not directly or indirectly counsel, advise, participate or aid in the declaration of any strike against the business of any present or future member of said Association, nor in the establishment or continuance thereof, nor in any measure, financial or otherwise, designed to make it effective. . . .<sup>11</sup>

A part of such individual contract or a supplementary contract may even go farther in limiting the activity of the individual worker. In the case cited above one form of contract, supplied to the employers by the association with instructions to require every employee to sign it, read in part as follows: "You represent to us that you are not a union man and agree not to hereafter join any union without our written consent."<sup>12</sup>

Very often too the practice of open-shop employers' associations in maintaining permanent employment bureaus or agencies creates an effective bar to the active union man. In speaking of the requirements of an applicant seeking employment through such a bureau one writer who is in sympathy with the method says:

<sup>11</sup> H. E. Hoagland, *Collective Bargaining in the Lithographic Industry*, pp. 95-96.

<sup>12</sup> *Ibid.*, p. 96.

He is required to give a complete record of himself, including the reasons why he left the shops where he was formerly employed. All the facts about him are put on a card which is kept in a permanent card catalogue. The secretary of the agency makes an investigation of the man's record. . . . In this way the employers find out who the disturbers are, and they are kept out of the shops.<sup>13</sup>

These examples could be multiplied many times to show that the open shop is not always free to all, the unionist as well as the non-unionist; and that on the other hand the closed shop is not always kept closed by the use of force or some form of coercion. Neither is it true that all shops recognizing the union are kept open by the union nor that all open shops are closed to union members. It appears quite clear, therefore, that we must reject the classification of open shop and closed shop if we are really desirous of finding names which are accurately descriptive.

In the early history of unionism in this country the terms open shop and closed shop were not used. Then shops were either "union" or "non-union": union if the organization had a voice in establishing working conditions; non-union if it did not.<sup>14</sup> Occasionally non-union shops were designated as scab or rat shops if the employer kept union men out. For the most part union shops were open to non-unionists as well as to union members for the unions of those early days had a naïve idea that they could legislate for the entire trade, whether or not they controlled the supply of labor in the trade.

Gradually the unions learned the necessity of bringing pressure to bear upon recalcitrant employers and hence they began to refuse to permit their members to work in shops on strike. The "closed" shop was one closed to union members.<sup>15</sup> It became an "open" shop when the union declared the strike off and permitted its members to return to work. Somewhat later the union, upon winning a strike, stipulated in the terms of peace that the shop be closed to non-unionists. The employers seized this conception of closed-shop unionism and have since made it the chief point of attack in their anti-union propaganda.

The publicity given to the open-shop movement of the past fifteen years has made it appear that there are but two kinds of shops to be considered: the closed shop which keeps out the non-

<sup>13</sup> I. F. Marcossou, in *World's Work*, vol. 11, p. 6963.

<sup>14</sup> F. T. Stockton, *Closed Shop in American Trade Unions*, p. 14.

<sup>15</sup> *Ibid.*, p. 14.



union workman, and all others, collectively called open shops.<sup>16</sup> At the time the terms were first used they may have been not far from accurate in their description of existing conditions. But certainly since that time the methods used by some of the so-called open-shop employers' associations have made necessary a new classification of terms to fit present conditions. The federal Commission on Industrial Relations has recognized this need and it is interesting to note that the *one* resolution which the commission adopted by unanimous vote read as follows:

Whereas the commission finds that the terms "open shop" and "closed shop" have each a double meaning, and should never be used without telling which meaning is intended, the double meaning consisting in that they may mean either union or non-union: Therefore, for the purposes of this report, be it

*Resolved*, That the Commission on Industrial Relations will not use the terms "open shop" and "closed shop," but in lieu thereof will use "union shop" and "non-union shop."

The union shop is a shop where the wages, the hours of labor, and the general conditions of employment are fixed by a joint agreement between the employer and the trade union.

The non-union shop is one where no joint agreement exists, and where the wages, the hours of labor, and the general conditions of employment are fixed by the employer without coöperation with any trade union.<sup>17</sup>

This distinction is essentially that made by trade unionists themselves. In a recent editorial in the *American Federationist* Mr. Gompers outlines the case as follows:

When an employer forms a treaty with the union, formal or tacit, his shop is union, even if the union consents for the time being not to disturb any non-union men among the employees. If the employer will not treat with the union or pay the union scale, his shop is non-union though among its employees may be union members. The deciding point as to whether a force of employees is union or non-union is the employer's actual recognition of union regulations.<sup>18</sup>

Are not the terms union shop and non-union shop more accurately descriptive than the terms open shop and closed shop? It is not the *presence* of union members in a shop that is important

<sup>16</sup> The open-shop movement has attained such proportions that open-shop schools and open-shop employment bureaus are very common. Open-shop literature is voluminous in amount. We even hear of Los Angeles and Washington as model open-shop cities.

<sup>17</sup> *Final Report*, p. 265.

<sup>18</sup> *American Federationist*, vol. 17, p. 885.

but rather their *activity* in securing or demanding a voice in the determination of the conditions under which they work.

Should we adopt this classification, there would be two sets of distinctions to be kept in mind. First, that between the union shop and the non-union shop: the union shop being one in which the union is a party to the wage bargain and the non-union shop being one in which the employer refuses to deal with labor in its collective capacity. Thus far we accept the classification suggested by the trade unionists. But there is a second distinction, equally important, which the trade unionists are not so ready to admit. The union shop may be either closed or open. Most unions accept the principle at least of the closed union shop. Whether or not they insist upon its enforcement depends upon expediency. In a few instances, notably in the transportation industry, open union shop seems to operate fairly successfully. Here the whole competitive field is covered by the agreement. The association of employers and the union fix, by joint action, the terms of employment for every position within this field, whether occupied by union members or non-unionists. The conditions essential to the success of the open union shop are: (1) The presence of a strong and well disciplined organization on each side; (2) the same scale of work and wages for both unionist and non-unionists; and (3) the settlement of all complaints, whether affecting union members or other workmen, by joint action of representatives of the union and the employers' association. In other words the union must act as the agent of all workers and must be protected from undercutting by non-members.

The non-union shop may also be, temporarily at least, either open or closed. If the employer does not fear the growth of unionism, he may not discriminate against union members in hiring workmen, even though he refuses to deal with them as such. On the other hand the employer may choose to keep union members out of his shop. In this case it seems that the only proper term to apply is closed non-union shop.<sup>19</sup> The employer is generally opposed to the closed union shop and almost never grants it voluntarily. When he is forced to grant such terms to the union he often considers the agreement merely a truce to be

<sup>19</sup> The same name would necessarily be applied, of course, to the shop which is temporarily closed to union members by the union itself on account of strike or other disagreement with the employer. However, these cases are relatively rare and can be described when necessary by a statement of the conditions surrounding them.

broken when opportunity offers. The temporary locus of the balance of advantage determines whether or not closed union shop shall operate. In many instances prosperous times bring closed-union-shop agreements. In succeeding dull periods the aggressive union members are dismissed and the remainder give up their affiliation in return for the retention of their jobs.

In passing judgment upon the closed union shop we should distinguish carefully between the closed union shop maintained by the open union and that maintained by the closed union. Obtaining membership in an open union is analogous to securing citizenship papers in a democracy. In both no groups are excluded except those whose members cannot attain the standards set for the entire organization. In each case individuals are excluded whose past conduct has been inimical to the welfare of the group. And in both the democracy and the open union qualified applicants for membership are admitted as soon as they satisfy the minimum requirements of admission. The closed union shop maintained by the open union has many supporters among economists and other members of the so-called third party to industrial disputes.<sup>20</sup>

Closed union shop maintained by a closed union, on the other hand, is wholly indefensible from the standpoint of social judgment. It operates for the benefit of the few and those few not always the most competent or the most deserving. Trade unionists themselves recognize the indefensibility of such a situation and for the most part deny the existence of the closed union. It is undoubtedly true that the practice of patrimony to keep down the numbers in a trade and the maintenance of prohibitive initiation fees or other artificial restrictions upon the entrance of competent workmen into a given industry are losing ground among union leaders themselves.

Likewise the closed non-union shop is equally indefensible unless we insist upon a very narrow interpretation of the sacredness of private property and the right of its owner to do with it as he wills. The spy systems used by some employers not only drive out of employment the trouble making agitator, but they keep all

<sup>20</sup> Professor Seligman, for example, after expressing himself as favorable to trade unions, says that unless the condition described here as closed union shop is maintained, the union itself will often cease to exist. *Principles of Economics*, p. 441. Professor Fetter, on the other hand, opposes closed union shop in any case and relies upon public sympathy to secure for labor higher wages when necessary. *Principles of Economics*, p. 250.

workmen in a state of mind which can hardly be described as fitting for liberty loving citizens of a free country. Employers agree that the closed non-union shop is indefensible. At least they are accustomed to deny its existence. It has been a very effective weapon in the hands of employers who have wished to establish what they have called open shop. It is harder to detect than the closed shop maintained by the closed union for its success depends to a large extent upon its secrecy, other pretexts being used as excuses for the dismissal of active union members.

Open shops, whether union or non-union, are essentially unstable.<sup>21</sup> The union employees continually attempt to organize the non-union workers and to establish closed union shop. The employer is equally anxious to prevent the complete unionization of his shop and will often resort to dismissal of active unionists if their activity seems to promise success.

In conclusion, the writer believes that because our present use of the terms open shop and closed shop is misleading and is not accurately descriptive of industrial relations in modern industry, we should eliminate these terms from economic discussions. As substitute terms we should adopt union shop to describe the establishment in which the union is a party to the wage bargain and non-union shop to describe the establishment which refuses to deal with labor organizations. The closed union shop would then correspond to what is now called the closed shop. While to avoid the confusion which arises under the present use of the term open shop, we would use three terms, open union shop, open non-union shop, and closed non-union shop, according to the degree of recognition given the union by the employer and the extent of his efforts to keep union members out of his establishment.

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<sup>21</sup> The transportation industry is apparently an exception to this rule for the reasons given above.